Docket No.: 067336-0014 PATENT



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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| In re Application of | : | Customer Number: 20277 |
| Kamimura, ICHIRO, et al. | : | Confirmation Number: 8795 |
| Application No.: 10/674,814 | : | Tech Center Art Unit: 3749 |
| Filed: October 01, 2003 | : | Examiner: GRAVINI, STEPHEN MICHAEL |

For: DRIER

**TRANSMITTAL OF APPEAL BRIEF**

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant's Appeal Brief in support of the Notice of Appeal filed March 16, 2006. Please charge the Appeal Brief fee of $500.00 to Deposit Account 500417.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. 1.17 and 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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## APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed March 16, 2006, wherein Appellant's appealed from the Primary Examiner's rejection of claims 1 through 3.

## I. REAL PARTY IN INTEREST

The real party in interest is Sanyo Electric Co., Ltd.

## II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related Appeal or Interference.



## III. STATUS OF CLAIMS

Claims 1 through 3, the only pending claims, have been finally rejected. It is from the final rejection of claims 1 through 3 that this Appeal is taken.

## IV. STATUS OF AMENDMENTS

No Amendment has been filed subsequent to the issuance of the Final Office Action dated September 20, 2005.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1, the only independent claim, is directed to a drier, which is equipped with a drying chamber for containing an article to be dried. The claimed drier comprises a refrigerant circuit containing, sequentially, a compressor, gas cooler, pressure reducing device and evaporator in an annular shape (Fig. 1, page 4 of the written description of the specification, lines 14 through 16, lines 20 through 27). The claimed drier also comprises a blowing means for circulating air in the drying chamber and exchange heat with the gas cooler and evaporator (page 4 of the written description, line 27 through page 5, line 14). Claim 1 specifically states that "... the blowing means is positioned in an air circulation path between the gas cooler and evaporator."

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claim 1 was finally rejected under 35 U.S.C. § 102 for lack of novelty as evidenced by either Brown or Goldberg; and

2. Claims 2 and 3 were rejected under 35 U.S.C. § 103 for obviousness predicated upon Brown or Goldberg in view of Ebara.

## VII. ARGUMENT

For the convenience of the Honorable Board of Patent Appeals and Interferences (the "Board"), Appellants do not separately argue the patentability of claims 2 and 3. Accordingly, claims 2 and 3 stand or fall together with independent claim 1 as a group.

**1. The rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by either Brown or Goldberg.**

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the claimed invention is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc., 329 F.3d 1358 (Fed. Cir. 2003); Crown Operations International Ltd. v. Solutia Inc., 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002).* In imposing a rejection under 35 U.S.C. § 102, the Examiner is required to specifically identify wherein an applied reference is asserted to identically disclose each and every feature of a claimed invention, particularly when such is not apparent as in the present case. *In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).* **The Examiner did not discharge that burden.** Indeed, there is a fundamental difference between the claimed drier and the drier disclosed by each of the applied references that scotches the factual determination that either Goldberg or Brown discloses a drier identically corresponding to that claimed.

**Insufficient Facts**

Independent claim 1 is directed to a drier and specifically states that "... the blowing means is positioned in an air circulation path between the gas cooler and evaporator." It is not apparent and the Examiner did not discharge the initial burden of identifying wherein either Goldberg or Brown discloses, or even remotely suggests, positioning a blowing means in an air circulation path between a gas cooler and evaporator, as specifically claimed. *In re Rijckaert, supra; Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., supra.*

**Goldberg**

The Examiner did not favor the record by even attempting to identify any air circulation path in the device disclosed by Goldberg. Certainly, the Examiner did not even attempt to explain how blower 15 or blower 24 (Fig. 1 of Goldberg) can possibly be said to be interposed in an air circulation path between any gas cooler and any evaporator.

**Brown**

It is not apparent and the Examiner did not point out wherein Brown specifically discloses any air circulation path in which a blowing means is positioned between a gas cooler and evaporator. In Fig. 2 of Brown, there are disclosed two blowing means 48 and 46. Blowing means 48 operates to circulate air between openings 52` and 52``. Blowing means 46 operates to circulate air between openings 50` and 50``. In one compartment 52 there is located condenser 62, which the Examiner has interpreted as the gas cooler. But in **another compartment** identified by reference character 50, which is **separate** from compartment 52, evaporator 66 is positioned. It is not apparent wherein any air circulation path is provided between condenser 62 and evaporator 66, each of which is in a separate

compartment, much less wherein any blowing means positioned in an air circulation path therebetween.

The above argued **structural difference** between the claimed drier and the drier disclosed by each of the Goldberg and Brown undermines the factual determination of lack of novelty under 35 U.S.C. § 102. In order to make up for factual deficiencies, the Examiner commits legal error in claim interpretation.

**The Examiner's Approach**

**In rejecting the claims under 35 U.S.C. § 102 based upon each of Brown and Goldberg, the Examiner committed clear legal error by ignoring specific claim limitations.**

Specifically, in rejecting the claims over Brown, in the first full sentence on page 3 of the September 20, 2005 Final Office Action, the Examiner offers the following:

> The blowing means position is given its broadest reasonable interpretation in light of the specification and can be considered new matter since the original specification is silent on the blowing means position between the gas cooler and evaporator.

The Examiner goes on referring to isolated excerpts in the specification wherein the blowing means is discussed in general without reference to a specific position between the gas cooler and the evaporator in an air circulation path. The Examiner then has the temerity to read out the specific limitation from claim 1 **requiring the blowing means to be positioned in an air circulation path between the gas cooler and evaporator**, under the pretense that such exclusion is broad and reasonable. A similar approach was adopted by the Examiner in rejecting the claims over Brown and is found on page 4 of the September 20, 2005 Final Office Action, commencing at line 9.

**The Examiner committed clear legal error in ignoring an express claim limitation from claim 1.**

Claim 1 expressly requires that "... the blowing means is positioned in an air circulation path between the gas cooler and evaporator." The Examiner reads that limitation out of claim 1 by offering what he considers to be a broad and reasonable interpretation of claim 1. This in itself constitutes **legal error**.

**The ignored claim limitation is not new matter.**

Initially, the Examiner never saw fit to impose a rejection under the first paragraph of 35 U.S.C. § 112 for each of adequate descriptive support. Indeed, Appellants understand why the Examiner never chose to impose such a rejection, because such a rejection would have been factually erroneous. Adequate descriptive support for claim 1, including the recited position of the blowing means is apparent from Fig. 1 and the related discussion thereof in the written description of the specification, notably paragraph [0018] wherein the air circulation path is identified by reference character 112, blower is identified by reference character 114 and is clearly positioned between gas cooler 154 and evaporator 157. Thus, there is clear written descriptive support for the claim limitation "... wherein the blowing means is positioned in an air circulation path between the gas cooler and evaporator."

Not that the above quoted limitation requires claim interpretation, but if it is to be interpreted in the context of the present invention, it means exactly what it says: "... that the blowing means is positioned in an air circulation path between the gas cooler and evaporator." *Phillips v. A.W. Corp., 415 F.3d 1303 (Fed. Cir. 2005)*, (en banc).

Based upon the foregoing, it should be apparent that the Examiner's excuse for ignoring a specific claim limitation based upon an asserted lack of descriptive support is factually and legally erroneous. This is because there is clear descriptive support for claim 1 in the written description of the specification. Further, the premise underpinning the Examiner's rejection, that lack of adequate descriptive support permits the Examiner to ignore claim limitation for purposes of an art rejection, is also clearly erroneous. *Ex parte Grasselli, 231 USPQ 393 (Bd.App. 1983), aff'd. mem., 738 F.2d 453 (Fed. Cir. 1984).*

**Summary**

The Examiner's rejection under 35 U.S.C. § 102 is legally flawed, because the Examiner ignored the express claim limitation requiring that: "... the blowing means is positioned in an air circulation path between the gas cooler and evaporator." *In re Lange, 644 F.2d 856, 209 USPQ 288 (CCPA 1981); In re Wilson, 424 F.2d 1382, 165 USPQ 494 (CCPA 1970).* The Examiner's rejection under 35 U.S.C. § 102 is factually erroneous because neither of the applied references to Goldberg and Brown discloses or suggests a drier having "wherein the blowing means is position in an air circulation path between the gas cooler and evaporator." *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc., 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986).* Appellants, therefore, submit that the Examiner's rejection of claim 1 under 35 U.S.C. § 102 for lack of novelty as evidenced by either Brown or Goldberg is not factually or legally viable.

**The rejection of claims 2 and 3 under 35 U.S.C. § 103 for obviousness predicated upon Brown or Goldberg in view of Ebara.**

Claims 2 and 3 stand or fall together with independent claim 1. Ebara does not cure the previously argued deficiencies of Brown and Goldberg. Accordingly, for reasons advocated with respect to independent claim 1, the Examiner's rejection of claims 2 and 3 under 35 U.S.C. § 103 for obviousness predicated upon Brown or Goldberg in view Ebara is not factually or legally viable.

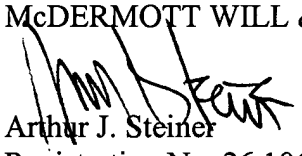
## VIII. PRAYER FOR RELIEF

Based upon the arguments submitted *supra*, Appellants submit that the Examiner's rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103 are factually and legally erroneous. Appellants, therefore, solicit the Honorable Board to reverse each of the Examiner's rejections.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



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**Please recognize our Customer No. 20277 as our correspondence address.**

## CLAIMS APPENDIX

1. A drier which is equipped with a drying chamber for containing an article to be dried, comprising:

a refrigerant circuit constituted by sequentially installing and connecting a compressor, a gas cooler, a pressure reducing device and an evaporator in an annular shape; and

blowing means for circulating air in the drying chamber to exchange heat with the gas cooler and the evaporator, wherein the blowing means is positioned in an air circulation path between the gas cooler and evaporator.

2. The drier according to claim 1, wherein a $CO_2$ refrigerant is sealed in the refrigerant circuit.

3. The drier according to claim 1 or 2, further comprising a rotary drum which is attached to a base through a suspension for vibration absorption and in which the drying chamber is installed,

wherein components constituting the refrigerant circuit are attached to the base, the air heat-exchanged with the gas cooler is supplied into the drying chamber, and a duct member for introducing the air passed through the drying chamber into the evaporator is flexible.

## EVIDENCE APPENDIX

Not applicable.

## RELATED PROCEEDINGS APPENDIX

Not applicable.